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Approved For Release 2005/01/26 : CIA-RDP80M00165A003100010018-1

OGC 75-3810
9 October 1975

MEMORANDUM FOR THE RECORD

SUBJECT: Privacy Act Social Security Number Requirements

1. In response to a question from Central Cover Staff the following advice was given regarding the application of section 7 of the Privacy Act. Section 7 states as follows:

SEC. 7. (a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to--

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

OGC Has Reviewed

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It was advised that with respect to forms or other documents required to be filled out by employees, all such forms or documents which request the employee's or contractor's social security number must, as of effective date of the Act, include the statement called for under section 7(b). This provision, however, applies only to those forms which evidence information supplied directly by the employee.

2. In the case of other forms evidencing information about the employee including the social security number when such other forms are prepared by the Agency without the direct contribution of the social security number information from the employee, the 7(b) statement need not appear on these forms.

3. As an example, the Personal History Statement submitted by all applicants requires the applicant's social security number. Since the applicant is filling out the form and is required himself to supply his social security number, the 7(b) statement must appear on the PHS. However, when, for example, Central Cover submits information to the Federal agency or party supplying the cover even though the information supplied includes the employee's social security number, the fact that the employee himself is not providing the number negates the need for the 7(b) statement to appear.

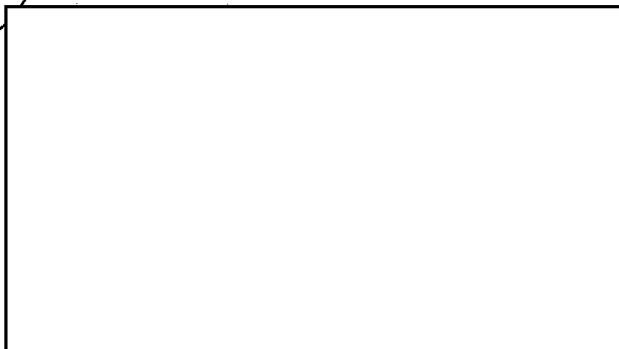
4. This advice applies to all components.

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OGC 75-3836
14 October 1975

MEMORANDUM FOR THE RECORD

SUBJECT: Disclosure of Information to Law Enforcement
Agencies Under Privacy Act

1. A question has arisen regarding the conditions of disclosure requirements in the Privacy Act. The issue concerns the extent to which a document must accompany requests by law enforcement agencies for CIA files on individuals. Section (b)(7) of the Privacy Act states that disclosures of information to law enforcement agencies or instrumentalities may be made only if the law enforcement agency or instrumentality submits a written request to the Agency "specifying the particular portion of the record desired and the law enforcement activity for which the record is sought." However, section (b)(3) of the Privacy Act allows disclosure of information for routine use. In the case of those files from which information will be sought by the FBI as an example, the publication of routine uses in the Federal Register in compliance with the Act states that one routine use will be transfer of information to law enforcement agencies for law enforcement or national security purposes.

2. It is arguable that a request by the FBI for information can be satisfied by a disclosure to the FBI under the routine use provision of the Act thereby negating the need for a written request. However, requests for transfer of such information under the routine use section could appear to conflict with the intent of the Privacy Act. Since (b)(7) is a specific criteria applicable to requests from law enforcement agencies, the general rules of statutory construction would require that the more specific section, i.e., (b)(7) take precedence over the more general requirement, i.e., (b)(3).

3. Mr. Reagan of the FBI Privacy Committee, however, states that they are interpreting the requirements for transfer of law enforcement agency information as being proper under (b)(3)--routine use. Mary Lawton, Deputy Assistant Attorney General, agrees with this view. The rationale

behind accepting the routine use theory is that such routine uses have been published in the Federal Register and are subject to public comment and challenge. Since the public has had an opportunity to consider such statements of routine use and have not made comment or challenges, transfers under such stated routine uses are permissible. The problem is most acute as it applies to overseas stations. In these cases requests by Legal Attaches for CIA records on individuals should, if the (b)(7) requirement will be followed, be accompanied by a written request. Section (b)(7) states that the request must be signed by the head of the agency or instrumentality making the request. The legislative history, however, states that the head of the agency requirement may be satisfied by a written request from a person at the level of section chief. In the case of the U.S. mission abroad, the Legal Attache would be a section chief and therefore would have the authority to execute such written request.

4. Reading the legislation and the history in toto, however, it is clearly arguable that transfers of personally identifiable information to law enforcement agencies may be accomplished through the routine use provisions of the Act, as reflected in published CIA regulations.

5. Transfer of such information is clearly a proper activity of the CIA and is consistent with the recommendations of the Rockefeller Commission that law enforcement activity regarding U.S. citizens be undertaken only by the properly authorized law enforcement agencies. Recognizing the proper compilation of data by the CIA for CI and national security purposes, coupled with the obligation of the CIA to transfer information of possible criminal activity to law enforcement agencies and to respond to proper requests from such agencies, such interchange is clearly a routine activity.

6. The possible conflicts between (b)(3) and (b)(7) of the Privacy Act are rationalized by the recognition that certain Federal agencies do not normally interact with law enforcement agencies, and thus transfers of information between the VA and the FBI for instance are of an exceptional nature requiring the written statement of purpose called for in section (b)(7) of the Privacy Act.

Recommendation

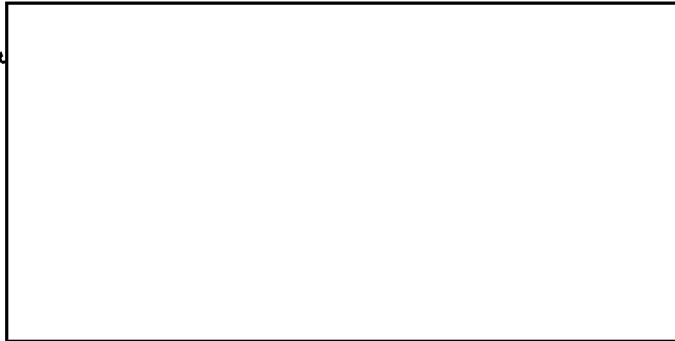
It is recommended that transfers of personally identifiable information to law enforcement agencies be carried out under the authority of the routine use provisions of the Privacy Act as reflected in regulations published [REDACTED].



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OGC 75-3837
14 October 1975

MEMORANDUM FOR THE RECORD

SUBJECT: Privacy Act Requirements Regarding Written Promises
of Confidentiality

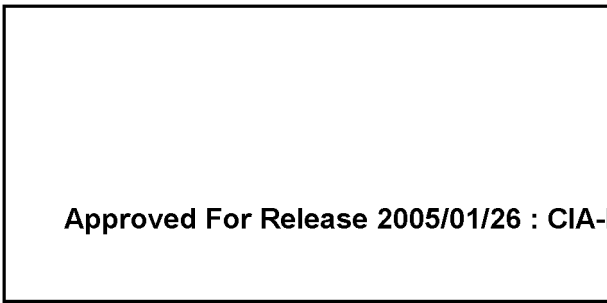
1. Met 2:00 p.m. this date with representatives of DDO.
2. DDO with concurrence of DCI notified DDO components to make a written record of all grants of confidentiality to sources including DCD sources, unilateral foreign sources, and liaison, etc. Implied in this request was the view that such express written records of confidentiality are required by either Privacy Act or Freedom of Information Act.
3. I advised DDO representatives that Privacy Act does not require a written expression of all grants of confidentiality but merely requires that, in the case of information supplied by a source regarding an individual when such information is provided for a law enforcement investigative purpose or for a variety of background checks, the identity of the informant can be withheld from the subject of the investigation only if an express grant of confidentiality is given at the time the informant provides the information.
4. This section of the Privacy Act refers to a rather narrow and discreet Agency function. It need not be read to include the confidential relationships the Agency has with sources in all other circumstances.
5. I further advised that there may be other reasons why DCI or DDO feel that this record must be kept and that I was not competent to advise as to other legal ramifications which may have prompted the request.



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TO	NAME AND ADDRESS	DATE	INITIALS
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<input type="checkbox"/>	ACTION	<input type="checkbox"/>	DIRECT REPLY	<input type="checkbox"/>	PREPARE REPLY
<input type="checkbox"/>	APPROVAL	<input type="checkbox"/>	DISPATCH	<input type="checkbox"/>	RECOMMENDATION
<input type="checkbox"/>	COMMENT	<input type="checkbox"/>	FILE	<input type="checkbox"/>	RETURN
<input type="checkbox"/>	CONCURRENCE	<input type="checkbox"/>	INFORMATION	<input type="checkbox"/>	SIGNATURE

Remarks:

Attached are three recent advisory memoranda drafted by the Office of General Counsel responding to specific questions on the Privacy Act. Although these memoranda are directed to specific component problems, they will be distributed to all components for your information.

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